

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GEANARD E. HOWARD,

Plaintiff,

v.

LARRY CRAWFORD, et al.,

Defendants.

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No. 4:09CV15 HEA

OPINION, MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Geanard E. Howard (registration no. n/a) for leave to commence this action without payment of the required filing fee [Doc. #2]. Because plaintiff was released from confinement shortly after filing the instant action, the Court will grant his request to proceed in forma pauperis and will not assess an initial partial filing fee at this time. Furthermore, based upon a review of the complaint, the Court finds that this action should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if “it lacks an arguable basis in either law or in fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff, a former inmate at Farmington Correctional Center, seeks monetary relief in this action for the violation of his constitutional rights under 42 U.S.C. § 1983. Named as defendants are Larry Crawford, Al Luebbers, Robert K. Graham, Jere Sloan, Unknown Moorison, E. Conley, J. Cofield, Richard Unknown, Jesse McFall, and Correctional Medical Systems. Plaintiff alleges that, after sustaining physical injuries in an automobile accident, defendants denied him adequate medical treatment.

Discussion

Plaintiff brings this action against the individual defendants in their official capacities. See Egerdahl v. Hibbing Community College, 72 F.3d 615, 619 (8th Cir. 1995)(where a complaint is silent about defendant's capacity, Court must interpret the complaint as including only official-capacity claims); Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989). Naming a government official in his or her official capacity is the equivalent of naming the government entity that employs the official, in this case the State of Missouri. Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989). "[N]either a State nor its officials acting in their official capacity are 'persons' under § 1983." Id. As such, as to the individual defendants in their official capacities, the complaint is legally frivolous and fails to state a claim upon which relief can be granted. The complaint is also legally

frivolous as to defendant Correctional Medical Systems, because plaintiff has failed to assert any claims or allegations against this entity.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #3] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's original motion for leave to proceed in forma pauperis [Doc. #2] and motion for appointment of counsel [Doc. #3] are **DENIED** as moot.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint, because the complaint is legally frivolous and fails to state a claim upon which relief can be granted.

An appropriate order of dismissal shall accompany this Memorandum and Order.

Dated this 25th day of February, 2009.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE